

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 13, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1413

Cir. Ct. No. 2014SC364

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BALDWIN AREA MEDICAL CENTER,

PLAINTIFF-RESPONDENT,

V.

MITCHELL BENGTON AND WANDA BENGTON,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Pierce County:
JAMES J. DUVALL, Judge. *Affirmed and cause remanded with directions.*

¶1 SEIDL, J.¹ Mitchell and Wanda Bengton, pro se, appeal a small claim summary judgment for money damages entered against them in favor of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Baldwin Area Medical Center (BAMC). On appeal, the Bengtsons argue the judgment is void. We affirm. Furthermore, we conclude the Bengtsons' appeal is frivolous pursuant to WIS. STAT. RULE 809.25(3) and remand this matter to the circuit court to determine BAMC's costs and attorney fees in defending against this appeal and to enter an order accordingly.

BACKGROUND

¶2 In 2014, BAMC commenced a small claims breach of contract suit against the Bengtsons, seeking a money judgment for medical services BAMC provided to Wanda in 2009. Mitchell, Wanda, and BAMC each moved for summary judgment. Mitchell argued he was entitled to summary judgment because (1) the circuit court lacked subject matter jurisdiction over him and (2) his marriage to Wanda did not make him liable for her medical expenses. Wanda argued she was entitled to summary judgment because (1) she did not authorize the medical services provided to her and (2) BAMC did not provide her with an itemization of charges.

¶3 BAMC supported its motion for summary judgment with two affidavits referencing attached documents. Mitchell and Wanda each failed to file affidavits or other evidence in support of their individual motions for summary judgment or in opposition to BAMC's motion. The circuit court granted BAMC's motion for summary judgment and entered a money judgment against the Bengtsons. The Bengtsons now appeal.

DISCUSSION

Merits of the Bengtsons' Appeal

¶4 Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. WIS. STAT. § 802.08(2). When determining whether there are genuine factual issues, the facts must be viewed in the light most favorable to the nonmoving party. *Kraemer Bros. v. United States Fire Ins. Co.*, 89 Wis. 2d 555, 567, 278 N.W.2d 857 (1979). Generally, “[w]hen both parties move by cross-motions for summary judgment, it is the equivalent of a stipulation of facts permitting the trial court to decide the case on the legal issues.” *Millen v. Thomas*, 201 Wis. 2d 675, 682-83, 550 N.W.2d 134 (Ct. App. 1996) (footnote omitted; citation omitted). “We review the grant or denial of summary judgment de novo, and we apply the same standard as does the trial court.” *Mach v. Allison*, 2003 WI App 11, ¶14, 259 Wis. 2d 686, 656 N.W.2d 766.

¶5 We conclude the circuit court correctly granted BAMC’s motion for summary judgment. BAMC’s evidence demonstrated that: (1) BAMC provided medical services to Wanda in 2009; (2) Wanda signed a written contract agreeing she was financially responsible for all charges associated with her admission at BAMC when she was first admitted; (3) Wanda failed to fully pay for the medical services BAMC provided her; and (4) the Bengtsons were married at the time BAMC provided medical services to Wanda. Therefore, BAMC has established a prima facie case for summary judgment. *See Brew City Redev. Grp., LLC v. Ferchill Grp.*, 2006 WI App 39, ¶11, 289 Wis. 2d 795, 714 N.W.2d 582 (breach of contract claim consists of three elements: (1) an enforceable contract; (2) a breach of that contract; and (3) damages); *see also St. Marys Hosp. Med. Ctr. v.*

Brody, 186 Wis. 2d 100, 109, 519 N.W.2d 706 (Ct. App. 1994) (“The [circuit] court properly concluded that because [the defendant] was married to [her husband] when he incurred necessary medical expenses, [the defendant] is equally responsible to [the hospital] for the debt under [WIS. STAT.] § 765.001(2).”).

¶6 Mitchell and Wanda each failed to support their individual motions or oppose BAMC’s motion for summary judgment with proper evidentiary materials. Therefore, BAMC is entitled to summary judgment. See *Hoida, Inc. v. M&I Midstate Bank*, 2006 WI 69, ¶16, 291 Wis. 2d 283, 717 N.W.2d 17 (noting that when a party makes a prima facie case for summary judgment, courts “review the opposing party’s [factual materials] to determine whether there are any material facts in dispute”).

¶7 On appeal, the Bengtsons make numerous arguments as to why they believe the circuit court’s judgment is void. As best we can ascertain, the Bengtsons argue that the judgment is void because: (1) the circuit court lacked subject matter jurisdiction; (2) there was insufficient service of process; (3) an unconstitutional tax was imposed on them in the form of the jury fee they paid that was not refunded; (4) they were denied their constitutional right to a jury trial; (5) they were denied their right to confront the witnesses against them under the Wisconsin Constitution; (6) their right to privacy was violated; and (7) they were denied their right to due process of law. However, none of these arguments are adequately developed. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶8 One excerpt from the Bengtsons’ brief-in-chief demonstrates the general problem with their arguments. For example, they argue:

Baldwin [A]rea Medical Center is manufacturing Subject Matter Jurisdiction [through] marr[i]age; this is completely and totally absurd and is a gate way for others to assume Subject Matter Jurisdiction and to attack our [Sovereign] Individual Rights and Immunities.^[2] What Baldwin Area Medical Center is [alleging] when it [involves] my wife “or Spouse” that I’m [automatically] liable; which is completely and [totally] ridiculous. This would be a gateway for the Police or other government agencies to write traffic and other citations to you as well as [your] spouse even though you had absolutely no [involvement] with the alleged offense

(Some spelling and punctuation changes only.) “[The Bengtsons’] brief is so lacking in organization and substance that for us to decide [their] issues, we would first have to develop them. We cannot serve as both advocate and judge.” *Id.* at 647. Therefore, we decline to address their arguments. *See id.* (declining to address inadequately developed arguments).

Frivolous Appeal

¶9 BAMC seeks costs and attorney fees pursuant to WIS. STAT. RULE 809.25(3) claiming it was required to defend against a frivolous appeal. We agree. As relevant here, a frivolous appeal is an appeal that a “party or the party’s attorney knew, or should have known ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” WIS. STAT. RULE 809.25(3)(c)2.

¶10 In determining whether an appeal is frivolous, we apply an objective standard, asking “what should a reasonable person in the position of this

² We note that after BAMC submitted its response brief in opposition to the Bengtsons’ motions for summary judgment, Mitchell apparently filed a motion arguing, *inter alia*, that he was a sovereign citizen.

pro se litigant know or have known about the facts and the law relating to the arguments presented.” *Holz v. Busy Bees Contr., Inc.*, 223 Wis. 2d 598, 608, 589 N.W.2d 633 (Ct. App. 1998) (citation omitted). “As with lawyers, a pro se litigant is required to make a reasonable investigation of the facts and the law before filing an appeal.” *Id.* (citation omitted). We conclude that WIS. STAT. RULE 809.25(3)(c)2. applies here.

¶11 Mitchell and Wanda each moved for summary judgment. Yet, neither submitted any affidavits or other evidence in support of their individual motions, nor did they properly oppose BAMC’s motion for summary judgment with evidentiary materials, even though BAMC submitted evidentiary materials. The Bengtsons do not explicitly challenge the circuit court’s summary judgment methodology on appeal. However, they should have known after conducting a reasonable investigation of the facts and applicable law that a challenge to the circuit court’s grant of summary judgment would be unsuccessful because (1) BAMC’s affidavits made a prima facie case for summary judgment and (2) they failed to submit any evidentiary materials in opposition. *See* WIS. STAT. § 802.08(3) (“When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the pleadings”). Furthermore, the Bengtsons should have known—after conducting a reasonable investigation of the facts and applicable law—that their numerous arguments on appeal would be unsuccessful because their arguments are “amorphous and insufficiently developed.” *Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

¶12 The Bengtsons argue that their appeal should not be found frivolous. However, their response as to why their appeal should not be found frivolous evinces exactly why their appeal is frivolous. For instance, they argue:

[BAMC's attorney's] [corrupt] self serving argument and [opinions] are based solely on the fact that there is no controversy; which is complete and totally ridiculous. The Affordable Health Care Act was passed to reform or fix a broken [corrupt] system and was a complete failure. Not only was it a Complete failure, it was the most controversial Act ever passed by the current establishment. The Government has gotten in bed with the Insurance Company and Health care providers and with the current election in progress let me remind this Court this current establishment is being called the most [corrupt] establishment yet; give way to Donald Trump huge success.

....

It could not be cleare[r] that all material facts of this case was in fact under dispute!! To state that there was no [controversy] is [corrupt] and dishonest and we should not have to go through some magic procedure only known to Attorney[]s at law that are clearly operating outside of the law and constitution.

(Some spelling and punctuation changes only.) Because we conclude this appeal is frivolous, we remand this matter to the circuit court with directions to determine costs and reasonable attorney fees to be awarded to BAMC and against the Bengtsons.

By the Court.—Judgment affirmed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

